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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,385	02/02/2004	Raymond J. Mueller	03-006	1144

22927 7590 05/07/2009
WALKER DIGITAL MANAGEMENT, LLC
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STAMFORD, CT 06905

EXAMINER

RUDY, ANDREW J

ART UNIT	PAPER NUMBER
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3687

MAIL DATE	DELIVERY MODE
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05/07/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/770,385	Applicant(s) MUELLER ET AL.	
	Examiner Andrew Joseph Rudy	Art Unit 3687	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 43-80 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 43-80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-5 and 43-80 are pending. Applicant cancelled claims 6-42.

Claim Rejections - 35 USC § 112

2. Claims 67 and 68 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 67, line 2, "presentation slots" is not clear as to its meaning in juxtaposition with the specification and drawings. Applicant's REMARKS have been reviewed, but are not convincing. In short, the term "presentation slots" is not defined in the descriptive portion of the specification in juxtaposition with the drawings to ascertain what it comprises. Clarification is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Godfrey et al., US 6,003,258.

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Godfrey discloses a menu price item that is automatically determined at a digital menu board, e.g. 100.

5. Claims 1-5 and 43-80, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Walker et al., US 6,341,268.

Walker discloses a menu price item that is automatically determined via a central server, e.g. 100, at a digital menu board, e.g. 500, a storage device, e.g. 400, a port, e.g. 150, where the price is determined at least partly on revenue management information using a central processor, e.g. 120.

Claim Rejections - 35 USC § 103

6. Claims 1-5 and 43-80, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Godfrey et al., US 6,003,258 or Walker et al., US 6,341,268.

Godfrey discloses a menu price item that is automatically determined at a digital menu board, e.g. 100. Godfrey also discloses one rule of thumb.

Official Notice is taken that plural rules associated with a data storage device have been common knowledge in the advertisement art. Intended use claim language, e.g. for determining a price, are given little, if any, patentable subject matter in juxtaposition with positively recited claim language, e.g. an apparatus, means. To have provided for plural rules for Godfrey would have been obvious to one of ordinary skill in the art. The motivation would have been to provide a more polished advertisement.

7. Claims 1-5 and 43-80, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al., US 6,341,268

Walker discloses a menu price item that is automatically determined via a central server, e.g. 100, at a digital menu board, e.g. 500, a storage device, e.g. 400, a port, e.g. 150, where the price is determined at least partly on revenue management information using a central processor, e.g. 120. Walker does not specifically discuss rules. However, revenue management information may be viewed in broad scope and content as dependent upon rules, e.g. instructions.

It is noted Applicant's intended use claim language, e.g. for determining a price, are given little, if any, patentable subject matter in juxtaposition with positively recited claim language, e.g. an apparatus, means. To have executed rules in association with the intended use claim language for Walker would have been obvious to one of ordinary skill in the art. The motivation for having done such would have been to have provided an up to date menu board for customer satisfaction.

8. Further pertinent references of interest are noted on the attached PTO-892.

9. Applicant's REMARKS regarding the previous rejection is noted, but is moot in light of the new grounds of rejection.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Joseph Rudy whose telephone number is 571-272-6789. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew S. Gart can be reached on 571-272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew Joseph Rudy/
Primary Examiner, Art Unit 3687